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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/562,744	12/29/2005	Visarion Ivanov Dimitrov	38486-02	7816

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EXAMINER

BEKKER, KELLY JO

ART UNIT	PAPER NUMBER
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1794

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09/17/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/562,744	Applicant(s) DIMITROV ET AL.	
	Examiner Kelly Bekker	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 12-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/29/05</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 12-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 12 and 13 recite, “the volume of the bread”. It is unclear as to what the “volume of the bread is”. It is unclear as to if it is the volume of the bread is the entire internal surface of the bread, or if the volume is a portion of the internal surface of the bread, or if the term has some other meaning.

Claim 14 recites, “vegetables with coloring effects are “spinach, carrots.... mushrooms, as well as spices with colouring effect such as parsley, curcuma, soya sauce, celery, mint, and basil.” It is unclear as to if the “spices” are considered vegetables or if the spices are included in the claim as a secondary ingredient in addition to the vegetables. Furthermore, the claim recites “spices... such as”. It is unclear as to if other spices that are not recited in the claim are encompassed by the claimed term “spices” or if the term “spices” is limited only to the spices recited in the claim.

Claim 15 recites, “citrus fruits such as oranges, bananas...”. It is unclear as to if other citrus fruits that are not recited in the claim are encompassed by the claimed term “citrus fruits” or if the term “citrus fruits” is limited only to the citrus fruits recited in the claim.

Claim 18 recites, “spices... such as”. It is unclear as to if other spices that are not recited in the claim are encompassed by the claimed term “spices” or if the term “spices” is limited only to the spices recited in the claim.

Claim 19 recites, “powdered food products... such as”. It is unclear as to if other powdered food products that are not recited in the claim are encompassed by the

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claimed term “powdered food products” or if the term “powdered food products” is limited only to the powdered food products recited in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12, 13, 15, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Kemeny (US 2003/0017233).

Kemeny teaches of a cooked dough product, i.e. a bread product, wherein the entire bread, i.e. the volume of the bread, contains adjacent sections comprising different fruits or vegetables in dried, i.e. natural colorant form, whereby each section has taste and color determined by the vegetable or fruit added to the dough (Figure 1, Claim 1, and Paragraphs 0030, 0031, and 0034). Kemeny teaches that the product is divided into four sections (Paragraph 0031). Kemeny teaches that the bread includes apples and meats (Paragraph 0034). Kemeny teaches that the food product can be shaped in cylindrical or rectangular shapes, such as circles and ellipse, i.e. the food product is capable of being cut in a horizontal or vertical section in desired forms as recited in claim 20 (Paragraph 0002).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kemeny (US 6808727 B2).

Kemeny teaches of a bread product comprising vegetables, apples, and meats as discussed above. Kemeny is silent to the types of vegetables in the product as recited in claim 14, to spices as included in the product as recited in claims 14 and 18, to the fruit and vegetables as powders of particles size 20-120um as recited in claim 17, and to the meats as in powdered form as recited in claim 19.

In the Background of the Invention (Applicant's specification pages 1-2), applicant admits that it was known to add carrots, celery, strawberries to bread products and that it was known for such additives to be in powdered form with a particle size of 20-30um.

Regarding the type of vegetables in the product, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a known bread vegetable, such as carrots, in the bread product taught by Kemeny. One would have been motivated to do so depending on the desired taste in the final product. For example, one would have been motivated to include carrots in a section of the final product in order to obtain a final product that had a carrot flavored section.

Regarding the food product as comprising spices, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a known bread spices, such as celery, in the bread product taught by Kemeny. One would have been motivated to do so depending on the desired taste in the final product. For example, one would have been motivated to include celery in a section of the final product in order to obtain a final product that had a celery flavored section.

Regarding the vegetable, fruit, and meat ingredients as in particulate form and the particulates with a particles size 20-120um, it would have been obvious to one of ordinary skill in the art at the time the invention was made for the flavor ingredients, including the vegetables, fruit, and meat to be in a powdered form so that the flavor could be more homogenously dispersed in the final product, i.e. powdered flavor particulates mixed homogenously in a composition would form a more homogenous mixture wherein the flavor was fully distributed than dried particulate pieces would. It

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would have been further obvious to one of ordinary skill in the art at the time the invention was made for the flavorant to be of a known size, such as 20-30um, depending on the texture desired in the final product. For example, it would have been obvious to one of ordinary skill in the art at chose a larger size particles if a grainier texture was desired. To do so would be within the routine determination and ordinary ingenuity of one of ordinary skill in the art at the time the invention was made and would not impart a patentable distinction to the claims absent any clear and convincing arguments and/or evidence to the contrary.

Claims 12-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shapiro (US 5514397) in view of Atwell et al. (US 2004/0022916 A1).

Shapiro teaches of a cooked dough product, i.e. a bread product, wherein the entire bread, i.e. the volume of the bread, contains adjacent sections comprising different taste and color (abstract, Column 3 lines 14-22, and Column 7 lines 14-18). Shapiro teaches that the product is divided into three sections (Figure 3). Shapiro teaches that the bread includes vegetable and fruit flavors (Column 5 lines 22-30). Shapiro teaches that the food product can be shaped in cylindrical or rectangular shapes, such as circles and ellipse, i.e. the food product is capable of being cut in a horizontal or vertical section in desired forms as recited in claim 20 (Figure 6, Column 3 lines 44-53 and Column 7 lines 6-10).

Shapiro is silent to the bread product as including flavorants, such as fruit or vegetables or meats in particulate form as recited in claims 12, 17, and 19, to the bread product as including specific flavorants, including carrots, celery, cheese, and strawberries as recited in claims 14, 15, 18, and 19, to the amount of the fruit or vegetable in the bread product as recited in claim 16, and to the particulate size of the fruit and vegetables as recited in claim 17.

In the Background of the Invention (Applicant's specification pages 1-2), applicant admits that it was known to add carrots, celery, strawberries to bread products and that it was known for such additives to be in powdered form with a particle size of 20-30um.

Atwell et al. (Atwell) teaches that particulate ingredient systems were added to bread products in order to increase nutrition while maintaining the desired organoleptic properties and shelf life (paragraph 0002, 0007, and 0050). Atwell teaches that the particle size of the ingredients affects the volume and texture of the final product (paragraph 0033). Atwell teaches that the particle size is greater than about 100um (paragraph 0055). Atwell teaches that dough includes 30-50% flour and 0-50% particulate ingredients (paragraphs 0056 and 0063). Atwell teaches that particulates that are desired in the breads include fruits, vegetables, nuts, spices, cheese, meats (paragraph 0060). Atwell teaches that the flavoring agents, such as herbs and spices are included in amounts depending on the desired flavor in the final product (paragraph 0134).

Regarding the bread product as including flavorants, such as fruit or vegetables or meats in particulate form, wherein the particulate size is from 20-120um, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the flavorants in particulate form of at least 100um particle size in view of Atwell. One would have been motivated to do so in order to obtain a final dough product with the desired volume and texture as taught by Atwell.

Regarding the bread product as including specific flavorants, including carrots, celery, cheese, and strawberries, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include specific flavorants depending on the nutrition and final taste desired in the final product. To include known bread ingredients, including carrots, celery, cheese, and strawberries, for their known function would have been obvious to one of ordinary skill in the art at the time the invention was made and would not impart a patentable distinction to the claims absent any clear and convincing arguments and/or evidence to the contrary.

Regarding the amount of the fruit or vegetable in the bread product, it would have been obvious to one of ordinary skill in the art to add 0-50% particulate with 30-50% flour in the bread or an amount to impart the desired flavor in the final product as taught by Atwell. To do so would be within the routine determination and ordinary ingenuity of one of ordinary skill in the art at the time the invention was made and would not impart a

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patentable distinction to the claims absent any clear and convincing arguments and/or evidence to the contrary.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Bekker whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lien Tran/
Primary Examiner
Art Unit 1794

/Kelly Bekker/
Examiner
Art Unit 1794